

United States District Court  
Northern District of Illinois  
Eastern Division

**FILED**

JUN 25 2008 aew

6-25-2008

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Darryl Moody petitioner )  
v )  
United States of America, ) Case No. 08CV820  
Respondent ) (03CR319)  
; ) Judge Gottschall

Rebuttal Motion To Government  
Opposition To a 28 USC § 2255 Motion  
Seeking To Vacate, Set Aside or Correct  
Sentence.

Argument

Petitioner's motion raised two arguments in support of his claim that trial counsel was ineffective: (1) trial counsel fell below the acceptable standards of effective assistance; and (2) trial counsel had an actual conflict of interest and that such conflict adversely affected his loyalty and interest.

As was indicated by the government that petitioners § 2255, was untimely, also in the alternative his ineffective assistance of counsel claims were without merit and the petition should be denied.

I. Equitable tolling should be granted to petitioner's untimely petition.

Equitable tolling excuses a untimely filing when the petitioner could not, despite the ~~exercise~~ of reasonable diligence have discovered all the information he needed in order to be able to file his motion on time. The use of the

equitable tolling doctrine is granted sparingly only when extraordinary circumstances far beyond the petitioner's control, prevents a timely filing. In this case petitioner never received or reviewed his trial transcripts since the denial of his post conviction appeal. To ask petitioner to file a 2255 motion alleging ineffective assistance of counsel would in itself be an extraordinary undertaking. Surely the loss of petitioners legal property by USP Coleman placed him in a very extraordinary and difficults position.

Petitioner did all he could to exercise due diligence, on March, 2007 he wrote USP Coleman's Captain Barak (See Attached), Counselor Denchize and the R & D officer Estrella seeking the assistance in obtaining

petitioners legal property. Petitioner also sought help from FCI Memphis, Captain Wynder and Counselor Wright, after which he filed a Tort Claim and requested an extension of time to file § 2255. After he was denied said motion for extension of time Petitioner filed an untimely § 2255 motion without benefit of trial transcripts.

Surely the court is cognizant of the fact that this petitioner's final opportunity to bring Redress before the court and doing so pro-se without transcripts is an extraordinary undertaking within itself.

The circumstances surrounding petitioner's untimely motion are beyond his control and with due diligence he has made a sincere attempts to comply with the rules of the court. Petitioner ask the court to consider a evidentiary hearing if necessary regarding the issue of equitable tolling.

Because of prison officials misconduct and complete lack of concern, petitioner should be granted equitable tolling. Without trial transcripts it would be virtually impossible to provide evidence or to raise the claim of ineffective assistance of counsel. The fair administration of justice in this case along with judicial integrity warrants equitable tolling.

## II. Petitioner's Ineffective Assistance Claims Are Endowed with Merit According To Counsel's Ethical And lawful Duty To Client.

Petitioner respectfully disagrees with the government and states that as already sets forth in his motion regarding ineffective assistance of counsel due to conflict of interest his claim is completely with merit. Anything short of an evidentiary hearing to determine such merits would be completely unjust.

Because of the said conflict, trial counsel's representation was adversely affected and rendered him ineffective.

Petitioner has already stated in his motion and by way of affidavit how trial counsel's ineffectiveness rendered the rights secured by the 5th and 6th Amendment to the U.S. Constitution. If the government and trial counsel wish to refute the said claim and respond by way of an affidavit, it would be the proper response.

In the interest of fairness and since the claims made are extrinsic from the record, a hearing is necessary to resolve the conflict of interest claim before the court.

Petitioner simply ask the court to grant such a hearing to determine the truth of the matter.

It is without doubt that petitioners claim, can be

Substantiated and corroborated. In conclusion, petitioner prays that the court will grant a hearing to determine the merits of his ineffective assistance of counsel claim due to a conflict of interest. It would not be possible to rule on this claim from the record because there are too many facts that exist outside of the record and the only way they can be refuted or proven is by a hearing.

Respectfully Submitted  
Darryl Moody /#

Darryl Moody 6/18/08

USP Hazelton  
P.O. Box 2000  
Bruceton Mills, West Virginia

Certificate of Service

On the 18 day of June 2008 I cause this motion to be filed by way of U.S. Mail at USP Hazelton WV.

Darryl Moody 6/18/08

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of the form. Use additional sheet(s) if necessary. See reverse side for additional instructions.			FORM APPROVED OMB NO. 1105-0008 EXPIRES 5-31-05
1. Submit To Appropriate Federal Agency:  REGIONAL COUNSEL  REGIONAL OFFICE 3200 Camp Creek Parkway, SW Building 200 ATLANTA, GA. 30331		2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and Zip Code)			
		DARRYL MOODY #31174-424 USP-HAZELTON POB 3000 BRUCETON MILLS, WV. 26525			
3. TYPE OF EMPLOYMENT MILITARY CIVILIAN		4. DATE OF BIRTH 7/14/76	5. MARITAL STATUS MARRIED	6. DATE AND DAY OF ACCIDENT 10/31/106	7. TIME (A.M. OR P.M.) A.M.
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.) I PLACED THE RECORD FILES OF MY CASE TRANSCRIPTS AND APPELLATE COURT'S AND DISTRICT COURTS RECORDS IN STORAGE. THE PRISON WAS LOCKED DOWN AND DURING WHICH I WAS TRANSFERRED FROM USP-COLEMAN I TO FCI MEMPHIS. THE RETRIEVAL EFFORTS OF MY LEGAL FILES AND RECORDS IN STORAGE IS LOST OR DESTROYED. IN EITHER EVENT I REQUIRE THESE LEGAL DOCUMENTS FOR PREPARATION OF PETITIONS AND TIME SENSITIVE ENGAGEMENTS (See Attached) PROPERTY DAMAGE					
9. NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code)					
10. NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code) NEW GONE TO: BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED (See instructions on reverse side) U.S. DISTRICT COURT CASE NO. 03CR317 APPALACHIAN PRETRAIL, AND SENTENCING RECORDS, TRANSCRIPTS, AND FILES. ALSO USCA CASE NO. 05-3907 APPELLATE COURT RECORDS, BRIEFS, AND FILES LAST IN STORAGE.					
11. STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEASED					
12. (See instructions on reverse) 12a. PROPERTY DAMAGE \$500.00					
12b. PERSONAL INJURY					
12c. WRONGFUL DEATH					
12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$500.00					
13. I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM 13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) Darryl Moody					
13b. Phone number of signatory					
14. DATE OF CLAIM 8-15-07					
15. CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS The claimant shall forfeit and pay to the United States the sum of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)					
16. CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Imprisonment for not more than five years and shall be subject to a fine of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the United States. (See 18 U.S.C.A. 287.)					
17. STANDARD FORM 55 (Rev. 7-85) PRESCRIBED BY DEPT. OF JUSTICE 28 CFR 14.2					
18. Previous editions not usable					

## PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and contains the information required in the letter in which this Notice is attached.

**A. Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 301 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

**B. Principal Purpose:** The information requested is to be used in evaluating claims.

**C. Routine Use:** See the Notice of System of Records for the agency to whom you are submitting this form for this information.

**D. Effect of Failure to Respond:** Incomplete is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

## INSTRUCTIONS

Complete all items - insert the word **NONE** where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF

Any instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in item #1 on the reverse side. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of further authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in item #12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, including itemized bills for medical, hospital or burial expenses normally incurred.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, including suggestions for reducing this burden.

16. Director, Torts Branch  
Civil Division  
U.S. Department of Justice  
Washington DC 20530

## INSURANCE COVERAGE

In order that subrogation claims be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? Yes, if yes give name and address of insurance company (Number, street, city, State, and Zip Code) and policy number. **No**

16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?

**No**

17. If deductible, state amount

**NONE** **N/A**

18. If claim has been filed with your carrier, what action has your insurer taken or proposes to take with reference to your claim? (It is necessary that you ascertain these facts)

**NO INSURANCE**

19. Do you carry public liability and property damage insurance? Yes, if yes, give name and address of insurance carrier (Number, street, city, State, and Zip Code) **No**

21 March 2007

Oscar Barat  
Correctional Captain  
United States Penitentiary-1  
P.O. Box 1033  
Coleman, FL 33521-1033

RE: DARRYL MOODY, REG NO 21174-424  
REQUEST COMPENSATION FOR LOST PERSONAL PROPERTY

Captain Barat:

On or about March 2006 in M-Unit, Unit Manager Carmona inspected my cell and noticed that I had stored legal transcripts and papers in a laundry bag -- secured underneath my bunk. Mr. Carmona ordered me to store my legal papers in my locker and I explained that I did not have enough room in my locker.

I requested space in M-Unit's Legal Room and Mr. Carmona informed that lockers in the Legal Room were unavailable and stated that my papers could be stored in the M-Unit Laundry Room and that I could retrieve my papers as necessary from him -- I agreed and removed my legal papers to the Laundry Room Storage.

In 2006 during an Institutional Lockdown my Security Level was changed from High to Medium and I was redesignated from USP-Coleman to FCI-Memphis, Tennessee. At that time I asked M-Unit's Case Manager Danchise to tell Mr. Carmona to retrieve my legal papers and transcripts from the Laundry Room Storage so that I could pack-out. Case Manager Danchise informed that Mr. Carmona no longer worked at USP-1 and that she, Ms Danchise, did not have a key to the Laundry Room Storage in M-Unit. The next day Ms. Estrada from R&D packed-me-out and I explained about my legal papers in Storage.

Ms. Estrada promised to get my property, legal papers and transcripts for me but failed to do so -- only some things from Education were retrieved by Ms. Estrada. I now find myself in need of my papers in order to seek post-conviction relief on my case and without my papers I will not be able to do so! I am unable to afford purchase of the transcripts from the Court Clerk and I respectfully request that you intervene on my behalf to retrieve my property and arrange compensation to the extent that I can purchase transcripts from the Court Reporter -- approximately five hundred dollars (\$500.00). I do not have enough time to complete the Tort Claim Procedure because of time limits in the Court; and I thank you for your time and support in this matter, Captain Barat. Know that I look forward to hearing from you soon.

Letter to Captain Barat  
21 March 2007  
Page 2

Respectfully submitted,



Darryl Moody  
Reg No 21174-424  
Federal Correctional Institution  
Box 34550  
Memphis, TN 38184-0550



BP-S148.055 INMATE REQUEST TO STAFF CDFRM

SEP 96

U. S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Mr. D. Dauchise / Case Manager	DATE: March 1, 2007
FROM: David Dauchise	REGISTER NO.: 2014-001
WORK ASSIGNMENT: Education Dept.	UNIT: Det. B - Mgmt. T.A.

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

The request is concerning my legal documents. I have been informed

at USP Coleman, Mr. Cormode advised me to place my legal

papers in the utility stamp folder in the housing area of M-Unit

at USP Coleman State that there is no longer a file for them

at the end of my transfer I will no longer have my legal

papers. I would like to know if there is any

way I can find it would not change back and see if it is in

there. This is a white virginia bag.

Thank you in advance for your time and effort in this matter.

(Do not write below this line)

3/2007  
100-27700

DISPOSITION:

Signature Staff Member	Date
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Record Copy - File; Copy - Inmate  
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86  
and BP-S148.070 APR 94



BP-S148.055 INMATE REQUEST TO STAFF CDFRM

SEP 98

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Mr. Astalla / R.T.D.	DATE: <i>Mark 1, 2007</i>
FROM: <i>Douglas Moody</i>	REGISTER NO.: <i>2144-6-4</i>
WORK ASSIGNMENT: <i>Education Dept</i>	UNIT: <i>Delta B PC - Memphis</i>

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

*This letter is regarding my legal property that was taken by*

*MP (MSI) Stevenson. (Not Manager) (Name) caused me to place my*  
*legal property in the storage room located in the laundry room*  
*because it was too much to fit in my locker. M-F-1 (314m. 100)*  
*or breakdown during my visitation and transfer while visiting in the*  
*visiting room. Legal property was in clear plastic bag. 100% COTTON*  
*and in there. This is in the white laundry room.*

*I think again, is this correct? I think this is the correct*

*time. Thank you.*

*Sincerely,*

*Douglas Moody*

(Do not write below this line)

DISPOSITION:

Signature Staff Member	Date
------------------------	------

Record Copy - File; Copy - Inmate  
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86  
and BP-S148.070 APR 94

\*BP-S148 055 INMATE REQUEST TO STAFF CDFRM

SEP 98

U. S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Captain W. J. Under	DATE: 4/10/27
FROM: Captain W. J. Under	REGISTER NO.: 21174-424
WORK ASSIGNMENT: 6th 100 ft. of 1st	UNIT: Delta-B

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

This is a copy of a letter my lawyer prepared that I have been having difficulties publishing  
from Ostromen (USFL) who I think of as a person that deserves to have his life told.  
He has the state's legal documents in addition to having them, strange child's name.  
I had a lot of transcripts and his legal books were never published. I am  
now reworking and preparing up his life. (Kurt Ostromen was an American  
and kept Ostromen as his last name of USFL Ostromen. Since the line  
wasn't present in LRC and my file number of 187 which have been unnoted.  
My deadline for filing my 2255 is 10/22/07. I would have very much  
appreciated going through the T.A. & C. office. Please call Robert Goss and ask  
that you him to search Ostromen's name of 187 for my transcripts. Please tell  
him I said ~~to~~ if he can't find them ~~please~~ reimburse me for half of  
these with (\$250.00) I will get the rest for my family. Thank you  
D. M. M. (Do not write below this line)

**DISPOSITION:**

Signature Staff Member	Date
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Record Copy - File; Copy - Inmate  
(This form may be replicated via WP)

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